

**MEMO ENDORSED**

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December 19, 2017

**BY ECF**

Honorable Valerie E. Caproni  
United States District Court  
Southern District of New York  
40 Foley Square  
New York, NY 10007

Re: **United States v. Percoco, et al., 16 Cr. 776 (VEC)**

Dear Judge Caproni:

We represent Defendant Joseph Percoco in the above-referenced matter. We respectfully submit this letter on behalf of Mr. Percoco and defendants Peter Galbraith Kelly, Jr., Steven Aiello and Joseph Gerardi regarding the Court's December 15, 2017 Order (Dkt. 396) (the "Order").

The Order requires the January Defendants to produce to the government and the Court on Friday, December 22, 2017, a list of exhibits the January Defendants intend to use in their cases-in-chief. The Court further ordered the January Defendants to produce those exhibits both electronically and in tabbed, hard-copy binders containing indices. We have been working diligently to comply with the Court's Order. In that regard, we are prepared to submit on Friday an exhibit list containing the exhibits we currently intend to use in our case-in-chief. However, we respectfully request one additional week to compile electronic and hard copy binders of those exhibits.

The requested extension is necessary to allow us time to prepare copies of the exhibits in the format requested by the Court. Prior to the Court's Order, we had agreed with the government to provide our materials on December 22<sup>nd</sup> in the same form the government has provided its exhibit list to us—by providing a list of exhibit numbers and bate-stamps. As a result, while we had begun identifying the materials, we had not yet begun the task of compiling electronic and hard copy binders of the exhibits we intend to use in our case-in-chief; rather, our primary focus had been the enormous volume of §3500 material and the government's case-in-chief. We have since refocused our efforts to produce the exhibit list in the format ordered, but producing those exhibits in that format is a significantly more burdensome task. We have added paralegals to the team for the express purpose of compiling binders, who are working around the

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clock. The process also requires coordination among the January Defendants, who are collectively sharing the services of DOAR to stamp defense exhibits.

DOAR has informed us that completing the stamping process in a time frame that allows the January Defendants the time we need to print, organize, and compile the hard copy binders before Friday is unlikely. We are also concerned that rushing the process will lead to mistakes. Accordingly, while we continue to work to comply with the Court's Order, we respectfully request the Court's permission to submit a copy of our exhibit list to the Court and the government on Friday—in a format consistent with what the Government has already produced to us—and to produce hard copies of those exhibits one week later, on December 29, 2017.

Respectfully submitted,

/s/ Barry A. Bohrer  
Barry A. Bohrer  
Michael L. Yaeger  
Andrew D. Gladstein  
Abigail F. Coster

Request GRANTED IN PART. No later than December 22, 2017, the January Defendants must produce to the Government their exhibit lists (with bates numbers or other markings that allow the Government to easily identify each document) and electronic copies of any exhibits not currently in the Government's possession. This Order applies to all exhibits that the January Defendants intend to use in their cases-in-chief. Failure to comply substantially and in good faith with this Order may result in preclusion of the exhibits at trial.

By December 22, 2017, the January Defendants and the Government must submit to the Court their exhibit lists electronically, in the format described in the Court's December 15, 2017 Order (Dkt. 396).

By December 29, 2017, the January Defendants must produce to the Government electronic copies and, if the Government wishes, hard copies of all exhibits that they intend to use in their cases-in-chief. By the same date, both the Government and the January Defendants must produce electronic copies and hard copies (in tabbed binders containing indexes) of case-in-chief exhibits to the Court.

All other deadlines will remain in effect, and no further extensions will be granted. The Court notes that the Defendants—not the Court—chose December 22, 2017 as their deadline to produce exhibits to the Government. (See Dec. 13, 2017 Letter, Dkt. 394, at 2.)

SO ORDERED.



12/20/2017

HON. VALERIE CAPRONI  
UNITED STATES DISTRICT JUDGE